

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL EVITT,

Plaintiff,

V.

EXPERIAN INFORMATION
SOLUTIONS INC. et al.,

Defendants.

CASE NO. 3:23-cv-05294-LK

ORDER DENYING MOTION FOR
EXTENSION OF DISCOVERY
DEADLINES

This matter comes before the Court on Defendants Equifax Information Services LLC and Trans Union LLC's motion to extend the case deadlines and trial dates by 90 days. Dkt. No. 54. For the following reasons, the Court denies the motion.

1. BACKGROUND

A. The Alleged Fraud

Plaintiff Michael Evitt is a long-time customer of Wells Fargo. Dkt. No. 1-2 at 6. In April 2022, an unknown nonparty individual accessed his Wells Fargo online bank account without authorization and transferred nearly \$18,000 to cover balances on two separate Bank of America

1 credit cards, neither of which belonged to Evitt. *Id.* at 7–8. After investigating the transfers, Wells
 2 Fargo “determined [that] the transactions were authorized” and “refused to reverse the [allegedly]
 3 fraudulent transfers[.]” *Id.* at 10–11. This spurred a rash of litigation.

4 **B. Evitt’s Arbitration Against Wells Fargo**

5 On October 26, 2022, Evitt sued Wells Fargo in Kitsap County Superior Court for
 6 violations of the Washington Consumer Protection Act. *See Evitt v. Wells Fargo Bank NA*, No.
 7 22-2-01795-18 (Wash. Super. Ct. Oct. 26, 2022). In January 2023, the state court granted Wells
 8 Fargo’s motion to compel arbitration, and in September 2023, it stayed the proceedings pending
 9 arbitration. *See id.*, Jan. 20, 2023 Mot. Hr’g; Sept. 15, 2023 Order Granting Mot. Pet.

10 **C. Evitt’s Lawsuit Against the Credit Reporting Agencies**

11 On March 15, 2023, Evitt filed a lawsuit in Kitsap County Superior Court under the Fair
 12 Credit Reporting Act (“FCRA”) against Defendants Experian Information Solutions Inc., Equifax,
 13 and Trans Union. Dkt. No. 1-2. Defendants are consumer credit reporting agencies (“CRAs”) that
 14 provide consumer reports as defined by 15 U.S.C. § 1681a(d) and (f). *Id.* at 4–5; Dkt. No. 13 at 4;
 15 Dkt. No. 24 at 2. Evitt alleges in his complaint that, despite his fraud disputes and supporting
 16 documentation, Defendants failed to (1) “delete inaccurate information in [his] credit files,”
 17 (2) conduct lawful reinvestigations, (3) mark his account as disputed, (4) maintain reasonable
 18 procedures to “filter and verify disputed information in [his] credit files,” and (5) “establish or
 19 follow reasonable procedures to assure maximum possible accuracy in the preparation of”
 20 defendants’ credit reports, thereby violating 15 U.S.C. §§ 1681i and 1681e(b). *Id.* at 12–15.

21 On April 6, 2023, Trans Union removed Evitt’s action to this Court with the consent of
 22 Experian and Equifax. Dkt. Nos. 1, 1-4. Settlement discussions and other early dealings among
 23 the parties resulted in extension of Equifax’s deadline to answer until at least July 11, 2023, and a
 24 concomitant extension of the deadlines for the Rule 26 conference, initial disclosures, and joint

1 status report. *See* Dkt. Nos. 9, 18, 24; 5/12/2023 docket entry. On August 5, 2023, the parties
 2 submitted a Joint Status Report, Dkt. No. 25, and the Court issued a scheduling order setting trial
 3 for September 9, 2024, with discovery motions due on March 13, 2024, and discovery to be
 4 completed by April 12, 2024, Dkt. No. 26 at 1–2.

5 In the meantime, Evitt filed a series of motions for the Clerk to issue subpoenas to various
 6 third parties pursuant to Federal Rule of Civil Procedure 45. On May 11, 2023, he filed a stipulated
 7 motion to issue subpoenas to four third-party entities—Bank of America, Wells Fargo, and two
 8 internet service providers—to obtain “records related to the alleged fraud.” Dkt. No. 20 at 2–3. On
 9 May 19, 2023, the Court denied Evitt’s motion without prejudice because, among other things,
 10 Evitt “fail[ed] to cabin the scope of [his] requests to the relevant time periods reflected in his
 11 complaint[.]” Dkt. No. 21 at 3.

12 On June 12, 2023, Evitt filed another stipulated motion to issue subpoenas, this time only
 13 to Wells Fargo and Bank of America. Dkt. No. 22 at 3. The Court again denied the motion without
 14 prejudice because Evitt had not shown “good cause” to permit discovery prior to a Rule 26(f)
 15 conference, which the parties had not yet had. Dkt. No. 23 at 3.

16 On September 6, 2023, Evitt filed an unopposed motion to issue a subpoena, this time only
 17 to Bank of America. Dkt. No. 27 at 4; Dkt. No. 27-2 at 2. After Evitt amended his motion twice to
 18 provide justification for the full range of time for which he sought records, Dkt. Nos. 31, 33, the
 19 Court ordered the Clerk to issue the subpoena to Bank of America, Dkt. No. 34 at 2. The Clerk
 20 issued the subpoena on the same day. Dkt. No. 35.

21 It appears that Evitt served Wells Fargo with a subpoena for a deposition in connection
 22 with this action on December 12, 2023. *See* Dkt. No. 58 at 4; Dkt. No. 48-15 at 3–5. Shortly before
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 24

1 that, on November 17, 2023, his arbitration against Wells Fargo ended with a \$10,500 award in
 2 his favor. Dkt. No. 58-2 at 6.¹ Evitt then took his dispute with Wells Fargo to federal court.

3 **D. Evitt's Federal Lawsuit Against Wells Fargo**

4 Evitt sued Wells Fargo in this District on December 8, 2023, alleging that Wells Fargo
 5 violated FCRA "by failing to fully and properly investigate [his] disputes; by failing to review all
 6 relevant information regarding same; by failing to accurately respond to the CRA; by failing to
 7 correctly report results of an accurate investigation to the CRAs; and by failing to permanently and
 8 lawfully correct its own internal records to prevent the re-reporting of the false representations to
 9 the CRAs, among other unlawful conduct." *See Evitt v. Wells Fargo Bank, N.A.*, 3:23-cv-06121-
 10 BHS, Dkt. No. 1 at 12–14 (W.D. Wash. Dec. 8, 2023). This action is in its early stages. On January
 11 8, 2024, the court issued an initial scheduling order requiring the parties to file a joint status report
 12 by April 8, 2024. *Id.*, Dkt. No. 7. And on March 7, 2024, Wells Fargo filed a motion for judgment
 13 on the pleadings. *Id.*, Dkt. No. 10.

14 **II. DISCUSSION**

15 Equifax and Trans Union seek a 90-day extension of the discovery deadlines and the other
 16 remaining deadlines in this case, including the trial date, to allow the parties to obtain outstanding
 17 third-party discovery from Wells Fargo. Dkt. No. 54 at 1, 4–5. They also contend that they need
 18 resolution of Experian's motion to compel arbitration (filed on March 1, 2024, Dkt. No. 42) prior
 19 to beginning trial preparation because Experian's "requested stay and possible exit from the case
 20 implicates both Defendants' likely strategies for defense and settlement (e.g. in the possibility
 21 of contribution or setoff from a third defendant, or discovery regarding possible shared culpability
 22 for possible award of attorney's fees)[.]" Dkt. No. 54 at 5. In response, Evitt argues that the Court
 23

24 ¹ The state court confirmed the award on March 22, 2024. *Evitt*, No. 22-2-01795-18 (Wash. Super. Ct. Mar. 22, 2024).

1 should deny the motion because Defendants filed it at the “13th hour,” do not demonstrate good
 2 cause, and already have the information they seek. Dkt. No. 58 at 2, 5–10. Evitt also suggests that
 3 further efforts to obtain discovery from Wells Fargo would be futile. *Id.* at 6–7. Equifax and Trans
 4 Union did not file a reply.

5 Scheduling orders “may be modified only for good cause and with the judge’s consent.”
 6 Fed. R. Civ. P. 16(b)(4). Rule 16(b) “primarily considers the diligence of the party seeking the
 7 [extension].” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Under
 8 this standard, a schedule modification is permissible if the current deadline cannot be met despite
 9 the diligence of the moving party. *See id.* The Court’s inquiry thus focuses on the moving party’s
 10 reasons for seeking a modification and, “[i]f that party was not diligent, the inquiry should end.”
 11 *Id.* Along the same vein, the provisions of Local Civil Rule 16 are “strictly enforced” in order to
 12 “accomplish effective pretrial procedures and to avoid wasting the time of the parties, counsel, and
 13 the court[.]” LCR 16(m)(1). Carelessness is incompatible with a finding of diligence, *Johnson*,
 14 975 F.2d at 609, as is “[m]ere failure to complete discovery within the time allowed,” which “does
 15 not constitute good cause for an extension or continuance,” LCR 16(b)(6).

16 As the moving parties, Equifax and Trans Union have the burden of demonstrating good
 17 cause. *See White v. Ethicon, Inc.*, No. C20-952-BHS, 2022 WL 596407, at *1 (W.D. Wash. Feb.
 18 28, 2022). They assert that following Evitt’s issuance of a subpoena to depose Wells Fargo, “all
 19 parties believed that [he] was in the process of obtaining said deposition[.]” Dkt. No. 54 at 4. They
 20 emphasize that “[t]he discovery and testimony from Wells Fargo, as the furnisher upon which
 21 [they] relied in reporting, is central to the defense of the case.” *Id.* at 5. Furthermore, “there likely
 22 exists testimony and other evidence regarding this matter that [they] can obtain from other forums,
 23 specifically in regards to the facts of the case as learned from Wells Fargo.” *Id.*

1 This does not constitute good cause. First, neither Equifax nor Trans Union have
 2 demonstrated the diligence necessary for this Court to grant their motion. *See Johnson*, 975 F.2d
 3 at 609; *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). If discovery and
 4 testimony from Wells Fargo was indeed “central to the defense of the case,” as they contend, it is
 5 inexcusable that neither Defendant sought such information from Wells Fargo and instead elected
 6 to rely on Evitt to conduct discovery on their behalf. Furthermore, Equifax did not issue discovery
 7 requests to Evitt until February 28, 2023—two weeks before the discovery motions deadline and
 8 only six weeks before the close of discovery. Dkt. No. 48-17 at 33. And while Trans Union issued
 9 discovery requests to Evitt in October 2023, Dkt. No. 48-13 at 35, there is no indication that it
 10 followed up—with Evitt or anyone else—with respect to any information it needed relative to
 11 Wells Fargo after receiving Evitt’s responses on November 15, 2023, Dkt. No. 48 at 4. Equifax’s
 12 and Trans Union’s lack of diligence alone is fatal to their motion. *See Zivkovic*, 302 F.3d at 1087.

13 Second, even if they had demonstrated diligence, Equifax and Trans Union fail to articulate
 14 how the specific information they expect to receive from Evitt’s deposition of Wells Fargo or from
 15 Evitt’s actions in other forums is relevant to their defense. *See generally* Dkt. No. 54; *see also*
 16 *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010) (discussing standards for
 17 reasonable reinvestigation).² The Court “cannot manufacture arguments for a [litigant],” nor will
 18 it. *Ramsey v. Muna*, 819 F. App’x 505, 507 (9th Cir. 2020) (cleaned up). Furthermore, Evitt has
 19 already provided Equifax and Trans Union with 1,311 documents, including the “Wells Fargo
 20 fraud affidavit,” “Wells Fargo fraud investigation findings,” “Wells Fargo monthly statement
 21 illustrating fraud and monthly payments on fraudulent balance,” “Wells Fargo fraud
 22 communications,” and “Wells Fargo fraud communications/investigation results.” Dkt. No. 58 at

23
 24 ² Evitt’s state court litigation against Wells Fargo has ended with a confirmed arbitration award, and therefore will not
 result in any more discovery. Dkt. No. 58-2 at 6; *Evitt*, No. 22-2-01795-18 (Wash. Super. Ct. Mar. 22, 2024).

1 8; *see also* Dkt. No. 48-18 at 10–16. Evitt has also already provided Equifax and Trans Union with
2 documents supporting his disputes and request for reinvestigation. *See generally* Dkt. No. 58-3.
3 Equifax and Trans Union elected not to file a reply explaining why these are not sufficient for their
4 defense in this case.

5 Finally, Equifax and Trans Union have had ample time to get what they needed relative to
6 Experian. Experian filed its motion to compel arbitration on March 1, 2024, more than a month
7 before the close of discovery. Equifax and Trans Union then chose to file their motion for extension
8 on the latest day possible, *see* Dkt. No. 26, and while that motion was pending, they were not
9 permitted to sit on their hands and “assume that [it] w[ould] be granted,” LCR 7(j). Instead, they
10 were obligated to comply with the existing discovery deadlines, including by seeking discovery
11 relating to Experian (or its potential absence from the case), unless and until the Court ordered
12 otherwise. *Id.*

13 Equifax and Trans Union have therefore failed to demonstrate good cause for a 90-day
14 extension of the deadlines in this case.

15 **III. CONCLUSION**

16 For the foregoing reasons, the Court DENIES Equifax and Trans Union’s motion. Dkt. No.
17 54.

18 Dated this 8th day of April, 2024.

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20 Lauren King
21 United States District Judge
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